

4 August 1949

MEMORANDUM TO FILES.

OGC Has Reviewed

1. Reference is made to memorandum of 8 July 1949 from Chief, CFB to the Office of the General Counsel, inquiring as to whether any authority exists for the amendment of travel orders to provide for the travel expenses of dependents of employees acquired after the issuance of travel orders, and either prior to or after the commencement of travel. Reference is also made to memorandum of 18 July 1949 from ADGO to the Director, concerning the specific case of [redacted] who acquired a wife at his TDY post of duty; i.e., Washington, D.C.

2. A review of the decisions on this subject has been made and various discussions have been conducted with representatives of the State Department whose administrative duties place them in frequent contact with problems of this type. The following paragraphs, therefore, will be devoted initially to a discussion of the decisions, and later to the practical solutions pursued by the State Department.

3. The decisions of the Comptroller have uniformly held that the right to transportation of dependents accrues on the effective date of the order directing a permanent change of station. It has been held that marriage after that date does not entitle an employee to transportation of his wife from her former home to the employee's new station. 2 Comp. Gen. 712

In the cited case, the employee was under orders dated September 23, 1922 to make a permanent change of station from the U. S. Veterans Hospital, Philadelphia, Pa. to a similar hospital in Sheridan, Wyoming, and was married in St. Louis while on leave of absence and while making the journey. It was held that the employee had no wife on the effective date of his orders to make a permanent change of station and, hence no right could accrue to the transportation of that which he did not then have.

The Comptroller views this matter from another angle which is interesting to note but would probably not be pertinent in reaching a decision today. The Comptroller stated that there is no authority for the transportation of dependents from home to the first duty station, nor from the last duty station to the home. The fact that the employee in the cited case had acquired a wife on the general route to be traveled on his permanent change of station did not shift to the United States the obligation of transporting her from their home or the place of his marriage to his first permanent duty station after the marriage.

We also find a similar case in 4 Comp. Gen. 438 which apparently involved a graduate of the Naval Academy who was detached therefrom on 5/1/24; left Annapolis 6/4/24; arrived Washington, D.C. 6/11/24; left Washington, D.C. 6/17/24; arrived San Francisco 6/21/24; left San Francisco 6/27/24; arrived Seattle, Washington 6/29/24; reported to Commandant 13th Naval District 6/30/24; and reported on U. S. S. Pennsylvania upon arrival 7/1/24. The record indicated that the officer was married in

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6. It has also been held that where an officer has no dependents at the date of detachment under change of station orders which do not assign him to a new permanent station, no right accrues to transportation of dependents acquired after said date solely as a result of such detaching order. 7 Comp. Gen. 664. However, in 25 Comp. Gen. 839, it was held that orders detaching an officer from his last permanent station without assigning a new permanent station do not of themselves constitute a new permanent change of station. It has also been held that when an officer is granted leave or authorized to delay en route on a permanent change of station, no travel is required until termination of the leave or delay and that travel by the officer or his dependent prior to the termination of such authorized leave or delay is at the personal risk of the officer. 8 Comp. Gen. 524.

In the decision previously cited, 26 Comp. Gen. 339, there was involved the case of Major Wilson who, upon returning from overseas duty, debarked at Ft. Mason, California on March 24, 1946 and following completion of FBI at that place proceeded to Reception Station No. 2, Ft. Dix, N.J., as directed by Letter Orders #328 dated April 10, 1946. By Special Order No. 108, dated April 18, 1946 he was assigned to a replacement pool at Ft. McClellan, Ala. Said orders authorized 60 days delay en route chargeable as leave, plus an allowance for travel time. Prior to the expiration of the period of leave so authorized, and before the officer actually reported at Ft. McClellan, Special Order No. 120 dated May 28, 1946 relieved him from assignment to the replacement pool at Alabama and directed that he report to the War Department, Washington, D.C. on or before June 18, 1946 for duty. Wilson was married on June 7, 1946 at Philadelphia, Pa. and claimed for reimbursement at the rate of 4¢ per mile for travel performed by his dependent wife from Philadelphia, Pa. to Washington, D.C. on June 17, 1946.

The Comptroller held that inasmuch as no travel by the officer was required under such orders prior to the date of expiration of authorized leave or delay, and since an officer's right to transportation of his dependent wife primarily depended upon the necessity of travel by him, and under such orders the officer is entitled to transportation for a dependent or dependents acquired after the date of orders, but prior to the date of travel the order is acquired, in like manner as an officer having dependents on the date of issuance of change of station orders. The Comptroller observed that the orders of March 13, 1946 under which Wilson was detached from such overseas station on or about March 16, 1946 did not assign him to a new permanent station, therefore, the effect of the orders of April 18 and May 28, issued while the officer was at Ft. Dix, N.J. for processing and disposition under the orders of April 10, was to complete the permanent change of station order by assigning him to a permanent station at Washington, D.C. upon expiration of (60) days leave. Under said order Wilson was not required to travel from Ft. Dix to Washington, D.C. until the expiration of his authorized leave on or about June 18, 1946. Since, on that date, Wilson, by reason of his marriage on June 7, had a dependent he was entitled to transportation for such dependent from the place where she was then located to his new permanent station, Washington, D.C., not to exceed the cost from Ft. Dix to Washington, D.C.

8. If the foregoing be accepted at the appropriate standard, then it is clear that partial relief can be achieved only through the application of administrative techniques which may, on occasion, be somewhat inconsistent with the facts. However, relief would still be partial and thus basically unsatisfactory. It would appear, however, that the standard to be applied may be available through the rationale of the decisions and sanctioned administrative practices of the Department of State, which decisions are concerned with the transportation of dependents and household effects of Foreign Service officers.

9. As a *sine qua non* to the conclusions reached in the decisions previously referred to is the principle that for effects to be transported at Government expense incident to a permanent change of station under the usual statutes authorizing transportation of dependents and household effects that the articles to be transported must be in the individual's possession on the effective date of the order directing the change of station, and such articles may not include property acquired after the effective date of the change of station orders. 13 Comp. Gen. 464; 24 Comp. Gen. 69; 27 Comp. Gen. 171; and 28 Comp. Gen. 363.

10. It is interesting to note that Foreign Service personnel are not necessarily bound by this long established principle. In 10 Comp. Gen. 268, it was held, quoting from the syllabus:

"To entitle Foreign Service officers to reimbursement of the cost of transportation of household goods, including automobiles, purchased while en route to a new post of duty, it must appear that the transportation charges were incurred only after title to the property passed to the officer and such charges may include only the actual and necessary cost of such transportation, subject to limitations prescribed in the regulations, directly from the place where title passes to him to his new post."

11. It is observed that this case was based on the question of where title had passed to the employee rather than when the property had been acquired.

12. 24 Comp. Gen. 69 involved an interpretation of Sec. 11 of the President's Regulations, Executive Order 8588 as amended by Executive Order 9122 dated April 6, 1942, issued under the authority of the Act of 10 October 1940, 54 Stat. 1105. In holding that the effect of Sec. 11 was to continue in effect the previously existing rules on after acquired property, the Comptroller General referred to 10 Comp. Gen. 268 as involving an application of the laws and regulations governing the transportation of the household goods of officers and employees in the Foreign Service of the Department of State who do not fall within the purview of said Act and the regulations thereunder. Although the employee involved in this case received an adverse decision under the after acquired rule, the Comptroller pointed out that he had reached his decision in the light of the long existing rule previously referred to which is applicable to all officers and employees of the Government other than those in the Foreign Service of the Department of State.

13. The fact that dependents may be acquired en route while being transferred from one station to another is illustrated by the type of order

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employee's TWT post of duty to place of assignment overseas.

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Legal Decisions